

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**PARKERSBURG DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 6:85-cr-00129-02

ROBERT STONE,

Defendant.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the Defendant's pro-se motion *Re: First Step Act of 2018* (Document 43) and the counseled *Memorandum of Defendant Regarding Eligibility for Reduced Sentence Under First Step Act* (Document 45), wherein the Office of the Federal Public Defender concedes that the Defendant is not eligible for a reduced sentence.

The First Step Act of 2018 (FSA) made certain provisions of the Fair Sentencing Act of 2010 retroactive. The Fair Sentencing Act reduced the disparity in the treatment of cocaine powder and cocaine base, with the effect of increasing the quantity of cocaine base necessary to trigger mandatory minimum sentences and reducing the sentencing ranges applicable under the Sentencing Guidelines for many crack cocaine offenses. Section 404(b) of the 2018 FSA permits courts to "impose a reduced sentence as if Sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed." FIRST STEP ACT OF 2018, PL 115-391, December 21, 2018, 132 Stat 5194. Sentence reductions are not available if the sentence was previously reduced under the Fair Sentencing Act or if a First Step Act reduction was

previously denied on the merits, and courts are not required to reduce any sentence even after finding a defendant eligible for a reduction. First Step Act § 404(c). The Fourth Circuit recently held that 18 U.S.C. §3582(c)(1)(B) is the proper mechanism for considering First Step Act sentence reductions. *United States v. Wirsing*, No. 19-6381, 2019 WL 6139017 (4th Cir., Nov. 20, 2019).

On December 5, 1985, Mr. Stone was sentenced to life in prison for his conviction, via guilty plea, of use of interstate commerce facilities in commission of murder for hire. The First Step Act permits reduction of sentences in accordance with the Fair Sentencing Act, which reduced the sentencing disparity between drug offenses involving crack cocaine and those offenses involving powder cocaine. The Fair Sentencing Act did not alter penalties associated with Mr. Stone's offense of conviction. Therefore, he is ineligible for relief under the First Step Act.

After thorough review and careful consideration, the Court **ORDERS** that the Defendant's pro-se motion *Re: First Step Act of 2018* (Document 43) be **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: November 25, 2019



IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA